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## FACSIMILE COVER LETTER

**TO:** Mayor Richard E. Greene (214)-665-6648  
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**FROM:** Jim Morriss

**SUBJECT:** Gulfco Marine

**DATE:** March 16, 2005

**CLIENT/FILE#** 022274.000181

**FAX NO.:** (See Above)

**ATTY PHONE EXT.:** 6130

**NO. OF PAGES:** 1/2

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March 16, 2005

*Via facsimile 214-665-2182*

Mr. Charles J. Sheehan  
Regional Counsel, Region 6 (6RC)  
U.S. Environmental Protection Agency  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Re: Gulfco Marine Maintenance Site in Freeport ("Gulfco Site"), Brazoria County,  
Texas

Dear Mr. Sheehan:

As you know, we represent The Dow Chemical Company. This letter is on behalf of The Dow Chemical Company ("Dow"), Chromalloy American Corporation ("Chromalloy"), and LDL Coastal Limited, L.P. ("LDL"). On March 10<sup>th</sup> you received, by facsimile, the parties' outline of the key terms of an approach to the investigation and remediation of the Gulfco Site employing the Texas Voluntary Cleanup Program ("VCP") under the umbrella of an Administrative Order on Consent ("AOC") with Region 6. (A copy of this outline is attached for your convenience.) During our meeting on March 7<sup>th</sup>, Mayor Greene directed us to pursue this approach and submit the outline as a prelude to working with you and Ms. Nann on the AOC.

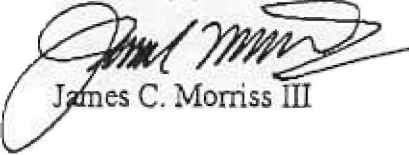
On March 11, 2005, we received the attached letter from Sam Coleman. As stated in my voice-mail and E-mail messages to you on March 14<sup>th</sup> and 15<sup>th</sup>, Mr. Coleman's characterization of the outcome of the March 7<sup>th</sup> meeting is not consistent with the decision of the Regional Administrator. Contrary to Mr. Coleman's assertion in the third paragraph on page 2 of his letter, the parties neither understood nor agreed that the Texas VCP cannot be used to investigate and clean up the Gulfco Site. Mayor Greene elected to pursue using an AOC with EPA to refer the matter to the State for action under the VCP. In fact, at the end of the meeting, Mayor Greene commented on the chosen course of action by noting that if the approach of using the VCP under the umbrella of an AOC didn't work, we could fall back on "Sam's Approach." Mr. Coleman's letter purports to confirm an agreement to proceed with his approach which never occurred in light of the Mayor's decision.

Needless to say, we are confused by Mr. Coleman's letter. As explained in my messages to you, we are ready to discuss the outline of the approach we submitted to you on March 10<sup>th</sup>, and to arrange a meeting with EPA and the TCEQ to discuss a work plan for the removal action, investigation and cleanup at the Gulfco Site. We are now at a loss as to how to proceed to explore the VCP alternative as directed by Mayor Greene and as requested by Governor Perry.

Mr. Charles J. Sheehan  
March 16, 2005  
Page 2

Please call me at your earliest convenience so the parties can proceed expeditiously with addressing the Gulfco Site.

Very truly yours,



James C. Morris III

Enclosure

cc: ***Via Facsimile***

Mayor Richard E. Greene, Regional Administrator, Region 6  
Lawrence E. Starfield, Deputy Regional Administrator, Region 6  
Samuel J. Coleman, P.E., Director, Superfund Division, Region 6  
Barbara Nann, US EPA Region 6  
Zak Covar, Natural Resource Advisor, Office of the Governor  
Dan Eden, TCEQ  
Jackie Hardee, TCEQ  
Caroline Sweeney, TCEQ  
Allen B. Daniels, LDL Coastal Limited, L.P.  
F. William Mahley, Strasburger & Price  
Brent Murray, Sequa Corporation  
Sandi VanWormer, Dow  
Scott Magelssen, Dow  
Steve Kilpatrick, Dow

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March 9, 2005

*Via facsimile 214-665-2182 and Certified Mail, Return Receipt Requested*

Mr. Charles J. Sheehan  
Regional Counsel, Region 6 (6RC)  
U.S. Environmental Protection Agency  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Re: Gulfco Marine Maintenance Site in Freeport, Brazoria County, Texas

Dear Mr. Sheehan:

As you know, we represent The Dow Chemical Company. This letter is submitted on behalf of The Dow Chemical Company ("Dow"), Chromalloy American Corporation ("Chromalloy"), and LDL Coastal Limited, L.P ("LDL"). We appreciated the opportunity to meet with Mayor Greene, you and other EPA representatives to discuss the investigation and remediation of the Gulfco Marine Maintenance Site (the "Site"). We think the meeting was very productive, and Dow, Chromalloy and LDL are ready to work with EPA and the State to document the process by which the parties will undertake the cleanup of the Site. As requested by Mayor Greene at our meeting on Monday, we have taken the first step to document the VCP approach we discussed, and upon which Mayor Greene directed us to proceed. We have prepared the enclosed outline of key elements of an agreement to return the Site to the Texas Voluntary Cleanup Program ("VCP") for investigation and remediation within the framework of an EPA Administrative Order on Consent ("AOC").

The parties agree with your assessment that the approach articulated by Mayor Greene can be handled at the Region. We believe the referral of the Site to the VCP can be accomplished by an AOC. Parties to the AOC would be Region 6, the participating parties and the TCEQ. (In the alternative, TCEQ could approve the AOC by separate action.) The AOC would permit a specific exception to the Memorandum of Agreement ("MOA") between Region 6 and the TCEQ rather than an amendment to that agreement. You may have other ideas about how best to accomplish our mutual goal to use the VCP to return this Site to productive reuse, and we looking forward to discussing these ideas with you.

So that Site activities can proceed efficiently, we propose that discussions with EPA and the State regarding the scope of work for the removal action, investigation, and remedy at the Site begin immediately and proceed concurrently with the negotiations on the AOC. I will contact you next week to discuss the enclosed outline. We can then move forward with the AOC. We also hope to be ready to meet next week to begin the technical discussions regarding

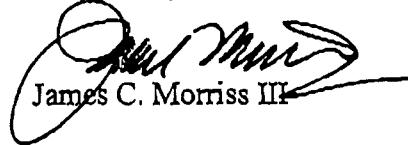
Mr. Charles J. Sheehan  
March 9, 2005  
Page 2

the scope of work. I presume that Gary Miller will remain EPA's point of contact for these technical discussions, and that Ms. Hardee will appoint an appropriate contact at the TCEQ.

By copy of this letter, I am forwarding a copy of the outline to Ms. Jackie Hardee and Ms. Caroline Sweeney of the TCEQ. We understand that Ms. Sweeney will be our contact for discussions regarding the legal framework.

We look forward to working with you on this matter.

Very truly yours,



James C. Morris III

Enclosure

cc: *Via Facsimile*  
Barbara Nann, US EPA Region 6  
Dan Eden, TCEQ  
Jackie Hardee, TCEQ  
Caroline Sweeney, TCEQ  
Allen B. Daniels, LDL Coastal Limited, L.P.  
F. William Mahley, Strasburger & Price  
Brent Murray, Sequa Corporation  
Sandi VanWormer, Dow  
Scott Magelssen, Dow

**OUTLINE OF KEY TERMS TO INVESTIGATE AND CLEAN UP THE GULFCO  
MARINE MAINTENANCE SITE UNDER THE TCEQ VOLUNTARY CLEANUP  
PROGRAM AND TO DELIST THE SITE FROM THE NPL**

**MUTUAL OBJECTIVE:** EPA Region 6 ("EPA"), the Texas Commission on Environmental Quality ("TCEQ") and the participating parties (The Dow Chemical Company ["Dow"], Chromalloy American Corporation ["Chromalloy"], and LDL Coastal Limited, L.P. ["LDL"]) share the goal of returning the Gulfco Marine Maintenance Site (the "Site") to productive use in a timely and cost effective manner.

To accomplish their mutual objective, the parties desire to collaborate in the investigation and clean up of the Site to ensure that response actions are protective of human health and the environment and that reuse opportunities are enhanced and promoted. Mayor Greene's willingness to use an approach employing the Texas Voluntary Cleanup Program ("VCP") for Site investigation and cleanup within the framework of an EPA Administrative Order on Consent ("AOC") advances this objective. Use of the VCP is an appropriate mechanism to implement a protective cleanup that will facilitate redevelopment by affording a buyer liability protection and will satisfy the National Contingency Plan requirements to delist the Site from the National Priorities List ("NPL"). Performance by the participating parties under the VCP will allow the work to be performed in an expedited manner, funded entirely with PRP funds and without using EPA's limited resources for oversight. EPA, TCEQ and the participating parties will enter into an AOC<sup>1</sup> to document the participating parties' obligations and the procedures for returning the Site to productive use through the VCP.

This outline describes the following key elements of the proposed approach and is intended to serve as the basis for developing the terms of an AOC:

- A. The Site will be retained on the NPL, but EPA agrees to refer the Site to the TCEQ for investigation and remediation under the VCP. A narrowly drawn exception to the VCP Memorandum of Agreement ("MOA") between Region 6 and TCEQ will be included in the AOC approved by EPA and TCEQ. This exception will allow the Site to be referred by Region 6 to the VCP. The AOC will contain enforceable terms which will govern the time frames for Site investigation and cleanup under the VCP.
- B. As set out in the VCP, the TCEQ will be the lead agency responsible for the review and approval of deliverables from the participating parties.
- C. EPA Region 6 will agree to hold enforcement action on the Site in abeyance as long as the parties are in compliance with the terms of the AOC and the VCP.
- D. EPA agrees to accept the VCP as an appropriate mechanism for investigating, defining and implementing the appropriate response actions required for the Site.

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<sup>1</sup> The parties can discuss whether the TCEQ can ratify the AOC entered into with EPA, or whether a separate order with the TCEQ will be necessary.

- E. The AOC will contain enforceable time deadlines for completing the investigation and cleanup under the VCP. Assuming 30-day review/approval periods and no force majeure events or other site or regulatory delays:
1. Surface Removal— remove the storage tanks and their contents, remove miscellaneous trash and debris including waste materials in the tank containment area – within 120 days from the effective date of the AOC.
  2. Assuming acceptance into the VCP and one field mobilization, complete the Draft Affected Property Assessment Report (“APAR”) 180 days from the effective date of the AOC.
  3. Submit a Draft Response Action Plan (RAP) describing necessary response actions within 60 days of approval of the APAR by TCEQ.
  4. Complete any required remediation within the time frame established in the approved RAP.
  5. Compliance with any and all conditions associated with the remediation of the Site (such as institutional controls) contained in any Certificate of Completion for the Site.
  6. Payment of the Site-related VCP invoices, when due
- F. All required response actions shall be completed in accordance with the clean-up standards required for commercial/industrial land use under the Texas Risk Reduction Program (30 TAC Chapter 350).
- G. While the Site is in the VCP and continuing after the Certificate of Completion for the Site is issued, EPA agrees to treat the Site, the participating parties, and all subsequent purchasers who are not responsible persons as of the effective date of the AOC, in accordance with the VCP and the MOA.
- H. If the participating parties fail to comply with the AOC or the VCP requirements, the TCEQ may remove the Site from the VCP, and EPA may pursue enforcement against the Site and the participating parties.
- I. After implementation of all appropriate response actions required under the VCP, TCEQ shall refer the Site back to EPA for review, and EPA shall delist the Site or a portion of the Site after confirming that the delisting criteria have been satisfied through the performance of the agreed work plan. The response actions completed under the VCP will be the basis for EPA’s review to confirm that the Site qualifies for delisting.

- J The parties and TCEQ shall provide for public participation in the form of public meetings, poster sessions, or fact sheets and/or notices. At EPA's discretion, the participating parties shall establish a community information repository at or near the Site to house documents prepared pursuant to the AOC for public review.<sup>2</sup>
- K Access to the Site and appropriate force majeure provisions will be negotiated.
- L Appropriate releases, covenants not to sue, contribution protection and reservation of rights will be negotiated.
- M Dow and Chromalloy shall provide financial assurance in the form of the financial test or other appropriate mechanism to demonstrate their ability to perform their obligations under the AOC and VCP.

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<sup>2</sup> The parties can discuss whether publication in the Federal and Texas Registers is warranted.





## FAX TRANSMISSION SHEET

**U.S. EPA, REGION 6  
SUPERFUND DIVISION  
ARKANSAS/TEXAS  
PROGRAM MANAGEMENT SECTION (6SF-AP)**

TRANSMISSION DATE: March 11, 2005

<u>TO:</u> James C. Morriss III	<u>Phone #:</u> (512) 469-6130	<u>FAX #:</u> (512) 482-5043
<u>FROM:</u> Gary Miller	<u>Phone #:</u> (214) 665-8318	<u>FAX #:</u> (214) 665-6660

Total Number of Pages: 4 If all pages were not received, please contact the sender.

Gary Miller  
Remedial Project Manager  
U.S. Environmental Protection Agency, Region 6  
Superfund Division (6SF-AP)  
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Dallas, TX 75202-2733  
e-mail: [miller.garyg@epa.gov](mailto:miller.garyg@epa.gov)

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## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

MAR 11 2005

James C. Morriss III  
Thompson & Knight LLP  
1900 San Jacinto Center  
98 San Jacinto Boulevard  
Austin, Texas 78701-4081

RE: Gulfco Marine Maintenance Superfund Site in Freeport Texas

Dear Mr. Morriss:

Thank you for your letter of March 4, 2005, concerning the Gulfco Marine Maintenance Superfund Site (Gulfco Site). The Environmental Protection Agency (EPA) appreciates your efforts to work towards our mutual goal of quickly cleaning up the Gulfco Site in order to delete the site from the National Priorities List (NPL).

As you know, EPA, as well as your group consisting of Dow, Sequa, and LDL Coastal (hereinafter referred to as "Potentially Responsible Parties [PRP] Group"), has been exploring ways in which to meet the goal of quick cleanup of the Gulfco Site in order to delete it from the NPL. EPA initially proposed that the Gulfco Site be investigated in a Remedial Investigation and Feasibility Study (RI/FS) and be cleaned up under a Remedial Action. As a PRP Group that takes your obligations seriously, you committed to do the RI/FS in an Administrative Order on Consent (AOC). EPA and the PRP Group worked diligently for seven months to reach an AOC to conduct the RI/FS portion of the cleanup.

As the negotiations were wrapping up, the PRP Group, in a February 23, 2005, letter proposed exploring a two-year cleanup of the Gulfco Site under the Texas Voluntary Cleanup Program (Texas VCP) in order to meet our mutual goal of quick cleanup. EPA fully supports the Texas VCP and believes that this program is an excellent approach under appropriate circumstances. EPA's Memorandum of Understanding (MOU) with the Texas Commission on Environmental Quality on the Texas VCP was negotiated under the premise of not using the Texas VCP for NPL Sites. An assessment of the appropriate nature of the VCP for use at NPL Sites has not been completed. This assessment is currently being considered as a result of Governor Perry's request. However, it will take a considerable amount of time to carefully evaluate and the possibility of adopting a new policy regarding NPL Sites and the Texas VCP.

Assessing the appropriate nature of the Texas VCP for use at NPL sites is a lengthy process. This, combined with your proposal's lack of detail about how a cleanup under the VCP would provide information sufficient to delete the Gulfco Site from the NPL, caused EPA to notify you in a February 28, 2005 letter via e-mail that EPA was willing to explore cleanup under appropriate State laws, but through an AOC with EPA so that the requirements for deletion from the NPL are met. In order to begin exploring this idea, EPA invited you to commit to an AOC process which would outline the investigation and cleanup of the Gulfco Site in a manner which will allow EPA to delete the Gulfco Site from the NPL.

The EPA was disappointed to learn in your March 4, 2005, letter, that you are declining to explore the AOC option to do cleanup of the Gulfco Site under federal and appropriate state law. An AOC between EPA and the PRPs assures that adequate information is collected to facilitate deletion as well as that appropriate response actions are completed. EPA is flexible as to the content of an order and scope of work assuming the cleanup is completed under federal and appropriate State law.

The EPA met with the PRP Group on March 7, 2005 in the Regional Office to discuss resolution of the impasse on the mechanism to most quickly clean up the Gulfco Site. At the meeting, the Regional Administrator reiterated some of the timing problems regarding the Texas VCP approach. EPA was pleased that the PRP Group understood the inability of meeting our mutual goal of timely cleanup under the Texas VCP process and agreed orally to exploring the AOC option with EPA in order to clean up the Gulfco Site. EPA requested that the PRP Group provide an outline of an investigation and cleanup that would take into account EPA's oversight role, public participation, assurance that all appropriate response actions are completed, and that is consistent with other NPL actions. EPA would like to see this issue resolved as soon as possible. Additional discussions to resolve this matter should be completed on an expedited basis.

In order to meet our mutual goal of quickly cleaning up the Gulfco Site in order to delete the site from NPL, the PRP Group can still sign the RI/FS AOC allowing for completion of the investigation in less than six months and the entire cleanup in eighteen months. This is quicker than amending the VCP program or drafting a new AOC for cleanup that incorporate appropriate State law. That being said, EPA is open to looking at alternative methods that will clean up the Gulfco Site faster than the options that EPA and the PRP Group have explored.

The EPA is looking to resolve cleanup of the Gulfco Site quickly. EPA eagerly awaits your alternative proposal in order to quickly wrap up discussions and begin cleaning up the Gulfco Site. Given the amount of time EPA has discussed with you the cleanup of the Gulfco Site, EPA believes it is reasonable to expect your proposal in the next couple of weeks so that we can discuss this matter in early April. Should you have any questions, don't hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Samuel Coleman". The signature is fluid and cursive, with the first name "Samuel" and last name "Coleman" clearly distinguishable.

Samuel Coleman, P.E.

Director

Superfund Division

cc: Bill Mailey  
Alan Daniels